

July 16, 2018

The regular monthly meeting of the Town Board of the Town of Greenville was held on Monday, July 16, 2018, at 7:05 pm at Pioneer Hall.

Present: Supervisor Paul Macko
Councilman Richard Bear
Councilman John Bensen
Councilman Greg Davis
Councilman Travis Richards

Recording Secretary: Clerk-Collector Jackie Park

Attorney: Tal Rappleyea

Department Heads Present: Maintenance and Water Superintendent P. Leroy Bear
Assistant Water Superintendent Renee Hamilton
Greenville Rescue Squad Chief Brian Tumey
Zoning and Code Enforcement Officer Mark Overbaugh
Highway Superintendent Terry Williams

Other: Mr. Tucker Lewis of Delaware Engineering
Presenter Ms. Patricia Carson, Lifestyle Coach with the
Independent Living Center of the Hudson Valley
and 18 guests

Supervisor Macko opened the meeting with the Pledge of Allegiance.

Sealed bids were requested for black top in place. This bid request was advertised in the Greenville Pioneer on July 6th.

The following sealed bids were received for 2,750 tons of black top in place:

Peckham Road Corporation	\$62.43/ton	\$171,682.50
Callanan Industries, Inc.	\$62.26/ton	total price not listed

The quotes were discussed with Highway Superintendent Terry Williams.

Mr. Bensen moved, seconded by Mr. Bear, to award the black top bid to Callanan Industries, Inc., at \$62.26/ton.

Carried 5 ayes

Ms. Patricia Carson, Lifestyle Coach with Independent Living Center of the Hudson Valley, offered a presentation on diabetes prevention. She reported that Greene County held one of the highest rates of Diabetes in New York State. A 5 year grant was received to run a pre-diabetes program entitled, "Prevent Type 2 For All". This one-year program will begin in this area on September 8, 2018, and is open to 15 Greene County residents who fit the criteria for being at-risk. Contact information is available at the Town Clerk-Collector's Office.

Mr. Bear moved to accept the Clerk's minutes of June 18, 2018, seconded by Mr. Davis.

Carried 5 ayes

At 7:13 pm, oral and/or written reports were received from the Rescue Squad, Highway, Buildings and Grounds, Code, Clerk/Tax, Sewer and Water departments.

-Greenville Rescue Squad Chief Brian Tumey offered an oral and two written reports, one for June and one year-to-date, as well as last month's report to be included here for the record of May's activities. Councilman Bear offered gratitude to the Rescue Squad for their two calls for assistance recently, when he needed it the most. Supervisor Macko noted excellent care and quick response when he called 911 for his mother. Both men stated, "Great job, thank you".

-Highway Superintendent Terry Williams offered a verbal report. Patching roads, mowing grass, and mechanical work have kept the department busy on their 10 hour per day summer schedule. Supervisor Macko noted a NYSDEC inspection was done at the highway garage and multiple violations were identified. This will be addressed in New Business.

-Maintenance Supervisor Leroy Bear listed work mowing weeds, preparing building specifications for a garage, obtaining supplies for the North Barn through Office of General Services; a new roof was ordered for the Pioneer Garage, benches were placed at the dog park, the records room door was in progress, and the storm windows were removed to allow work on the stained glass at Prevost Hall.

-Code Officer Mark Overbaugh offered a verbal and written report; pool and porch permits were becoming a high demand item. Tractor Supply is coming along nicely.

-Supervisor Macko offered the sewer report; the DEC was working on licensing agreements to increase the daily capacity to 80,000 gallons. Delaware Engineering employee Tucker Lewis noted Engineer Alan Tavenner had been working on easements at the Tops Plaza to allow the sewer line to continue on to the Tractor Supply parcel.

-Water Superintendent Leroy Bear noted all was working well at the plant.

-Councilman Bear reported on Recycling Department; all was working well. Supervisor Macko noted another successful hazardous material collection event a few weeks ago, sponsored by the County.

-The Beautification Committee report was offered by Supervisor Macko. They are busy working on Greenville Day. Member Brian Mulligan asked for the Town's support as a contribution towards the fireworks display. This has been budgeted for.

Mr. Bear moved, seconded by Mr. Bensen, to contribute \$750 to the Beautification Committee, to be used for the fireworks display on Greenville Day.

Carried 5 ayes

New business discussed at 7:25 pm:

-Attorney Rappleyea discussed the history of the solar projects, the moratorium, and then the hardship waiver application. Attorney Rappleyea reported he had attorney-client conversations with each of the board members, and then had prepared a resolution. Stated, "These are their words, not mine." Attorney Rappleyea read the draft resolution as prepared. The resolution relayed that the Town Board finds that the Applicants have not carried their burden to prove that an extraordinary hardship would occur if the waiver is not granted and that the other arguments made in support are either not relevant or unsupported by the facts in accordance with certain rationale, as outlined in the resolution.

Mr. Bensen moved to accept the proposed resolution, with clerical errors corrected, declaring the Applicant did not meet its' burden to prove a waiver and thus same was denied, seconded by Mr. Davis. Resolution attached.

Roll call requested;

Supervisor Macko	aye	
Councilman Bear	aye	
Councilman Bensen	aye	
Councilman Davis	aye	
Councilman Richards	aye	Carried 5 ayes

Attorney Rappleyea noted work will continue on the solar zoning law review and a new law will be put in place which will then allow applicants to pursue their plans, with updated guidelines.

Councilman and Solar Review Committee Chair Greg Davis requested the next meeting have an extended time to meet; the next scheduled meeting on Monday, August 20, 2018 will commence at 5:00 pm in Pioneer Town Hall to allow an additional hour of work.

-Bids were received at last month’s meeting for 2 items, and were tabled until this meeting:

1. The North Barn roof. It was stated that this bid was ‘excessive’. Leroy Bear noted it had been put to bid as required, and nobody wanted to do it! Mark Overbaugh asked if the shingles had ever actually been tested for asbestos; Councilman Bear and Supervisor Macko agreed that we should do that.

Mr. Bear moved, seconded by Mr. Bensen, to have Adirondack Labs test a North Barn roof shingle for the presence of asbestos.

Carried 5 ayes

2. The Maintenance Building for equipment storage, near Vanderbilt Park. Supervisor Macko agreed we do need one; a lot of money has been invested in equipment. Other options discussed were purchasing a kit, and the use of volunteers. Prevailing wage was discussed, as well as grant monies and in-kind funds. Expected monies from DASNY were addressed. It has been 10 years, and the Town is owed \$100,000. The latest email indicates that DASNY is still awaiting legislative approval to release funds. Supervisor Macko stated this can be bonded, but that it must be callable. When money comes in, we must be able to pay off the loan without penalty. Councilman Bear feels we’ve spent taxpayer money on this equipment, and it must be properly cared for.

Mr. Bear moved, seconded by Mr. Davis, to accept and award last month’s bid by R. S. Moreland Construction, Inc., for the building, in the amount of \$52,401.

Carried 5 ayes

Mr. Bear then moved, seconded by Mr. Bensen, to authorize Attorney Rappleyea to explore bonding and begin this project.

Carried 5 ayes

To note, Mr. Leroy Bear thanked the Board for their time and follow up on this project.

-An \$11,401 rebate has been awarded to the Town of Greenville through the Municipal Zero-emission Vehicle Infrastructure Rebate Program. As previously discussed, an Electric Vehicle (EV) charging station has been planned for town property and will be placed at the Library. Once the EV charging station is installed, the Town will get a \$35,000 Clean Energy Communities Program grant for demonstrating clean energy leadership.

Mr. Bear moved, seconded by Mr. Davis, to put installation of the EV Charging Station out to bid, to be opened on Monday, August 20, 2018 at 7:00 pm at Pioneer Town Hall.

Carried 5 ayes

-A Notice of Violation letter from the NYS DEC was received, pertaining to an inspection done at the Greenville Highway Department facility. Violations pertaining to Petroleum Bulk Storage (PBS) must be addressed, by repairing or replacing the tanks. Options addressed included repairing an old system, for \$35,000 - \$40,000, sharing services with the GCSD, replacing at an estimated cost of \$130,000, or just buying fuel from Stewarts. Discussion ensued. Councilman Davis feels that, regardless, the school district should be paying towards system upgrades, and not just for the cost of fuel itself. Supervisor Macko will contact Greene County to inquire as to how they charge other agencies who receive fuel from them. It was discussed putting replacement tanks out to bid, based on the specifications received already, to compare costs.

Mr. Bensen moved, seconded by Mr. Davis, to put the removal of the existing tanks and installation of a new vehicle fueling facility at the Highway Garage out to bid, to be opened on Monday, August 20, 2018 at 7:00 pm at Pioneer Town Hall.

Carried 5 ayes

-Supervisor Macko addressed a need to manage the bills for the sidewalk project and the stained glass work at Prevost Hall, so they can be paid promptly and before the grant money is received. The stained glass work is fully reimbursable, and the sidewalk project is funded with an 80/20 grant ~ which means the town will be responsible for 20% (or \$180,000.)

Mr. Bensen moved, seconded by Mr. Bear, to authorize Attorney Rappleyea to pursue a short-term construction loan of \$150,000.

Carried 5 ayes

Supervisor Macko opened the meeting for public comments and questions at 8:30

pm: Resident Paul Augstein inquired as to who beautifies the planters and roadside at the intersection, now that Mrs. Elsbree does not? Ms. Valicenti and Ms. Zibura volunteered to do the gardening and improvements, with gratitude noted from the Board.

-Ms. Zibura requested that the solar committee meeting be noticed on the outside board with each occurrence; noted currently posted was the July 9th meeting. This will be managed.

-Ms. Valicenti requested the Planning Board minutes be posted online as the Town Board minutes are. This will be managed as well.

As there are no further public comments, Mr. Bensen moved to enter executive session at 8:35 pm, seconded by Mr. Richards, to discuss collective bargaining negotiations per Article 14 of Civil Service Law.

Carried 5 ayes

Mr. Davis moved to return to regular session at 8:52 pm, seconded by Mr. Bear.

Carried 5 ayes

No motions were made in executive session.

The audit of bills occurred; after audit, Mr. Bear moved, seconded by Mr. Davis, to pay the following bills:

Bills 242 – 274 on General abstract #7 for \$26,967.04

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- Bills 136 – 146 on Highway abstract #7 for \$7,556.70
- Bills 79 – 92 on Sewer abstract #7 for \$58,606.64
- Bills 70 – 80 on Water abstract #7 for \$25,563.63
- Bills 10 – 11 on Freehold Solar, LLC, escrow abstract #5 for \$2,037.50
- Bill 7 on Amberjack Solar, LLC, escrow abstract #5 for \$1,972.50

Carried 5 ayes

After review, Mr. Bear made a motion to accept the Supervisor’s report for June, seconded by Mr. Davis. Carried 5 ayes

There being no further business, Mr. Macko moved to adjourn at 9:20 pm.


 Jackie Park, Town Clerk-Collector

_____ SUPERVISOR MACKO

_____ MR. BEAR

_____ MR. BENSEN

_____ MR. DAVIS

_____ MR. RICHARDS

**RESOLUTION
FREEHOLD SOLAR LLC
MORATORIUM HARDSHIP APPLICATION
TOWN OF GREENVILLE TOWN BOARD
July 16, 2018**

**TOWN OF GREENVILLE
CLERK-COLLECTOR**
Received
JUL 18 2018
Jacque Lark

The Town Board of the Town of Greenville hereby Finds and Determines as follows:

WHEREAS, Freehold Solar LLC, Cypress Creek Renewables and Catherine Lynch (the “Applicants”) previously applied for a site plan review and approval to the Town of Greenville Planning Board (hereinafter referred to as the “PB”) of a 2-MegaWatt Community Solar Facility to be located on a 32.2-acre parcel of land located on Route 32, Town of Greenville, NY bearing tax map #: 51.00-1-5. The facility is proposed to cover approximately 18.8 acres of the parcel; and

WHEREAS, the Applicants proceeded through the application and public hearing process, having completed the SEQRA process, including the submission of a “Cumulative Impacts Report” due to the submission of multiple other similar applications filed by the Applicants within close proximity of the subject parcel. The PB issued a SEQRA Negative Declaration, but reserved the right to amend same based upon the final determinations in connection with such Report; and

WHEREAS, prior to the final review and comment by the Town Engineer on such Report, the Town Board (hereinafter referred to as the “TB”) enacted a local law establishing a six-month moratorium on the approval of any solar power generating facilities in the Town. The moratorium was implemented because of the numerous applications either filed or about to filed

with the PB by the Applicants and others, within close proximity of the Freehold Solar project and the need to review and perhaps upgrade the Town zoning law to allow for appropriate regulation and review of those applications. Such moratorium local law included a “hardship” provision wherein parties who could demonstrate a hardship could apply to the TB for a waiver from the strict compliance with the moratorium based upon certain criteria. Such hardship provision is as follows:

SECTION 7: HARDSHIP

Should any owner of property affected by this Local Law suffer any extraordinary hardship in the way of carrying out the strict letter of this Local Law then the owner of the said property may apply to the Town Board of the Town of Greenville in writing for a waiver from strict compliance with this Local Law upon submission of evidence of such extraordinary hardship. For the purposes of this Local Law extraordinary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a special use permit, site plan, subdivision, variance or other permit during the period imposed by the moratorium imposed by this Local Law.

A request for a waiver based upon extraordinary hardship shall be filed with the Town Clerk, including a fee of \$350.00 to cover processing and advertising costs by the landowner, or the applicant with consent of the landowner. The request shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship and shall contain such other information as the Town Supervisor or his designee shall prescribe as necessary for the Town Board to be fully informed with respect to the application.

Upon submission of the aforementioned written application to the Town Clerk, the Town Board shall, within thirty (30) days of receipt of said application, schedule a public hearing. A public hearing on any request for an exception for extraordinary hardship shall be held by the Town Board at the first regular meeting of the Town Board that occurs after the expiration of the publication of notice of the request for a waiver. The notice shall be advertised in the Town's designated newspaper at least ten (10) days prior to the date of the public hearing. Notice shall also be given, by regular mail, to abutting property owners at the addresses on the tax rolls.

At said public hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of said Public Hearing, render it's

decision, either granting or denying the application for variation from the strict requirements of this Local Law.

If the Town Board determines that a property owner will suffer extraordinary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall waive the application of the local Law to the minimum extent necessary to provide the property owner relief from strict compliance with the Local Law.

; and

WHEREAS, the Applicants then submitted a hardship application seeking a waiver of the strict compliance of the moratorium on May 11, 2018. In support of the Application, the Applicants submitted a 5-page application letter, which was supplemented with a 10-page Exhibit "A" which included an Executive Summary of the Impacts of the Freehold Solar project; and emails/letters evidencing the payment of funds to Central Hudson Gas & Electric in connection with the project. Additionally, the Applicants submitted a letter from landowner Catherine Lynch in support of the application.

Specifically, the Applicants argued that the waiver should be granted because

- a) The applicants have expended \$343,995.00 in interconnection costs paid to Central Hudson and \$176,564.00 in development costs for items such as engineering, consulting, surveying and legal fees;
- b) The delay would cast an uncertainty on whether the original application to the PB would be approved after the moratorium is lifted and amendments (if any) to the town zoning law are implemented;

- c) A delay in the vote of the PB (and presumed approval thereof) was caused by a family emergency of the Town's engineer and resultant inability to review the aforementioned Cumulative Impacts Report. This alleged delay lasted approximately 3 months;
- d) The doctrine of "vested rights" would exempt the original PB application from being subject to the terms of the moratorium;
- e) The doctrine of "special facts" would exempt the original PB application from being subject to the terms of the moratorium;
- f) The delay caused by the moratorium will result in financial difficulties for the landowner Catherine Lynch;
- g) Since the delay would cast an uncertainty on whether the original application to the PB would be approved after the moratorium is lifted and amendments (if any) to the town zoning law are implemented, then a further uncertainty would be cast on the alleged benefits of the project to Greenville residents for losing the potential ability to subscribe to purchase electric from the Applicant and might result in the loss of PILOT payments that are currently under consideration between the Applicant, the Town, Greene County and the Greenville School district.

The TB duly noticed and held a public hearing on the application on June 18, 2018. The Applicants submitted a brief statement in support of the application and highlighted the above arguments in favor of the application.

Several members of the public then testified, most of whom were against the granting of the waiver. The following were the arguments raised by the public in opposition:

- The Applicant is large, multi-billion dollar company for whom whatever potential loss might be incurred by a delay from the moratorium is miniscule
- The Applicant should be subject to whatever new laws or regulations which may be enacted during the moratorium, just like any other applicant
- Environmental concerns are real and the proposed facility will result in negative environmental impacts
- The Applicant caused the moratorium to occur by filing multiple applications very close to one another. Further the Freehold Solar application is not consistent with “Best Practices” since it is being proposed on property that has the potential for other development, while Best Practices urges the use of land which cannot be used for another purpose
- The proposal is not consistent with the Town Comprehensive Plan
- The Hudson Valley in general and Greenville in particular, is the “new Long Island” and solar development will be good for the area
- Solar power and other forms of natural electric generation (such windmills) are progress and will only help. It is similar to other historic events like the Transcontinental Railroad and the Erie Canal

Over three weeks following the close of the public hearing, the Applicant filed a letter with the Town Board dated July 11, 2018 responding to the points raised by the public during the

hearing. Despite being outside the public hearing time frame, the TB also took such information into account during its deliberations.

WHEREAS, in accordance with 6 NYCRR § 617.5(c)(30), this action is considered a Type 2 action under the New York State Environmental Quality Review Act (“SEQRA”) and is therefore exempt from environmental review; and

WHEREAS, a referral to the County Planning Board pursuant to Section 239-1 and 239-m of the General Municipal Law is not required herein since the interpretation of a zoning code is not an action which is subject to such referral under the definitions therein; and

WHEREAS, following the close of the public hearing the TB conducted an in-depth review and analysis of the above facts, issues and testimony at the public hearing and the contents and definitions within the moratorium local law. The TB reviewed, considered and applied all the materials submitted by the Applicants in connection with the hardship application, including the full record, minutes, testimony and submissions contained in the PB file relating to the original application herein.

NOW, THEREFORE, BE IT RESOLVED, that the TB finds that the Applicants have not carried their burden to prove that an extraordinary hardship would occur if the waiver is not granted and that the other arguments made in support are either not relevant or unsupported by the facts in accordance with the following rationale.

I. ALLEGED FINANCIAL HARDSHIP AND UNCERTAINTY IN CONNECTION WITH FUTURE APPROVAL IF TOWN ZONING LAW IS CHANGED

The Applicants have argued that the funds expended in connection with the PB application are at jeopardy of being lost. However, this argument calls for conjecture since there is only a potential of the loss which might occur if, a) the delay causes the Applicant to lose the Interconnection Costs paid to Central Hudson; and b) the new legislation currently being worked by the Town somehow prevents the project from moving forward. Both of these eventualities are unknown at this point in time and thus it is not possible to actually establish the loss.

Moreover, the interconnection costs are a requirement for all applications to Central Hudson and the potential for the loss of such costs is merely a cost of doing business. It is a risk that is taken for each and every application. The Board acknowledges that the applicants have progressed the application at the PB stage of the review, but there are no guarantees that the PB would have or should have approved the project. This holds true for the consulting and site plan application development professional and other costs, as well. These are costs which must be incurred for every application, whether they are ultimately approved or not.

Additionally, as the Applicants point out, it is only a possibility that Central Hudson will not refund the Interconnection Costs which the Applicants have paid *if* the waiver is not granted and *if* the project is not later approved. That loss *might* occur if all three things happen. This cannot be said to be an extraordinary hardship caused by the moratorium.

The Board also acknowledges and understands the financial situation that the landowner Ms. Lynch is in. However, that situation was not created by the application and ensuing moratorium or any action of the Town.

As previously stated, there can be no guarantee that the application was going to be approved before the moratorium or will be approved after the expiration of the moratorium and an approval is not a right which is provided by any law. Unfortunately, the Applicants have made the assumption that the application was going to be approved---again this is conjecture.

II. THE DELAY IN THE VOTE WAS CAUSED BY THE TOWN ENGINEER'S FAMILY EMERGENCY

The Applicants have again relied on the assumption that an approval was imminent. A vote by the PB was indeed imminent, but the approval may or may not have occurred. A delay did occur, but it has no relationship to whether an extraordinary hardship occurred. Regardless of the cause of the delay, there is no causal or other connection to any real or potential extraordinary hardship. In fact, this argument is the exact argument that the moratorium language says is not a factor to be considered.

Further, the record before the PB reveals that on multiple occasions the Applicant did not return to that Board with additional information for several months at a time during the review process. To argue that the final three-month delay is the cause of any potential issues is incongruent.

III. THE DOCTRINES OF VESTED RIGHTS OR SPECIAL FACTS ARE NOT RELEVANT TO A DETERMINATION OF EXTRAORDINARY HARDSHIP

The applicant has also argued that the doctrines of “vested rights” and “special facts” create a rationale for the granting of a waiver. However, those two legal theories are not relevant to or have any significance in whether to the TB should grant a hardship waiver.

As the Applicant points out in its' application materials and as is clear from the plain language of the moratorium local law, a finding of extraordinary hardship is proven by a showing of a hardship that is more than mere delay of the completion of the review of an application. The vested rights and special facts have no relation to such a determination. Rather, they relate to situations where a law or ordinance has changed during the review of an application. Thus, at best this argument is not ripe and most aptly fails because the expense that the Applicants have shouldered are expected and required in order to even be considered by Central Hudson. Thus, even if those doctrines were relevant to a hardship determination, the Board finds that the Applicant has not proven that the facts merit such a determination. See, eg., Town of North Elba v. Grimditch, 131 AD 3d 150 (3rd Dept., 2015).

IV. THE POTENTIAL LOSS OF BENEFITS TO THE TOWN, SUCH AS PILOT PAYMENTS AND ABILITY OF RESIDENTS TO RECEIVE SERVICE FROM THE APPLICANTS IS ALSO NOT RELEVANT TO A HARDSHIP DETERMINATION

The Applicants argue that the potential loss of PILOT and other payments and an inability for the public at large to gain access to the electric to be generated at the proposed facility are other pieces of evidence that an extraordinary hardship exists. However, this argument fails for a number of reasons.

First, the hardship that is required must be for that of the Applicant, not a third party. The plain language of the moratorium states "Should any owner of property affected by this Local Law suffer any extraordinary hardship in the way of carrying out the strict letter of this Local Law..." (emphasis added). Thus, any other alleged harm is not relevant.

Second, the level of the PILOT payments is still being negotiated between the Applicant, the town, Greene County and Greenville Central School. No agreement has been reached, written or signed. Indeed, it is possible that no such agreement will be reached, thereby effectively ending the project. Again, it is too early to tell and the argument calls for so much conjecture that it is impossible to arrive at a logical point.

BE IT FURTHER RESOLVED, that the TB specifically finds that the determinations made herein are to be narrowly construed to the specific set of facts of the within appeal and should have no precedential value except in closely analogous fact patterns and/or situations, and

BE IT FURTHER RESOLVED, that the Town Clerk is directed to file this Resolution within five (5) business days. On a motion by John Bensen, seconded by Greg Davis the forgoing was approved unanimously.

<u>TOWN BOARD Members</u>	<u>Aye</u>	<u>Nay</u>
Paul Macko	<u> x </u>	<u> </u>
Richard Bear	<u> x </u>	<u> </u>
Greg Davis	<u> x </u>	<u> </u>
John Bensen	<u> x </u>	<u> </u>
Travis Richards	<u> x </u>	<u> </u>

By a vote of 5 to 0, the Town Board determined that the Applicant did not meet its' burden to prove a waiver and thus same was denied.

Jaime Park
Town Clerk-Collector